REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR. MISC. CIVIL APPLICATION NO. 93 OF 2012

IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW PROCEEDINGS

AND

IN THE MATTER OF CONSTITUTIONAL RIGHTS PURSUANT TO ARTICLES 21(1), 23(1) 23(3) (f), 25 (c), 27 (1), 47(1), 49(1)(d) & 50(2) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE LAW REFORM ACT, SECTION 8 AND 9 CAP 26 LAWS OF KENYA

AND

IN T HE MATTER OF THE POLICE ACT SECTION 5(1) CAP 84 LAWS OF KENYA

AND

IN THE MATTER OF THE POLICE REGULATIONS ACT CAP 20 FORCES STANDING ORDERS

BETWEEN

REPUBLIC .....APPLICANT

-VERSUS-

THE COMMISSIONER OF POLICE .....1ST RESPONDENT

THE PROVINCIAL POLICE OFFICER.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

SIMON MEREBU KIKWAI ..... SUBJECT

JUDGEMENT

INTRODUCTION

1. In his Motion brought on Notice dated 12th April 2012 filed the same day the *ex parte* applicant herein, **Simon Merebu Kikwai**, seeks the following orders:

1. **An order of CERTIORARI to remove into this Honourable Court and quash the decision of the 1st Respondent conveyed by the Provincial Police Officer, Nairobi vide a letter Reference number B/EST/A/15/vol.19(102) dated 15.12.2011 which was served upon the Applicant on 27th December, 2011 at 10.00 am, while at Nairobi Remand which letter contained a signal Reference number B/EST/1/15/Vol-19/98 dated 2.12.2011, purporting to dismiss the Applicant from the Police Service with effect from 30.11.2011.**
2. **An order of PROHIBITION to remove into this Honourable Court and prohibit the 1st Respondent from issuing such orders, new and/or further orders purporting to dismiss the Applicant from the Police Service allegedly envisaged in the Police Regulations Act, Chapter 20 of the Force Standing Orders and/or the Police Act, Chapter 84 of the Laws of Kenya and to further Prohibit the 1st Respondent from delegating his aforementioned powers to any of his authorized Subordinate Offices to dismiss the applicant from the police service.**
3. **An order of MANDAMUS to compel the 1st Respondent and/or the 2nd Respondent to reinstate the Applicant to the Police Force with immediate effect.**
4. **The Leave so granted to operate as a stay of the Dismissal Order issued by the 1st Respondent vide a letter dated 15/12/2011 dismissing the Applicant from the force' effective 30/11/2011, pending the Hearing and determination of his application.**
5. **Costs of and incidental to the application be provided for.**
6. **Such further and other reliefs that this Honourable Court may deem just and expedient to grant.**

EX PARTE APPLICANT'S CASE

2. The said Motion is supported by Statutory Statement filed 23rd March, 2012 and Verifying Affidavit filed and sworn the same day by the *ex parte* applicant herein.
3. According to the *ex parte* applicant, he was enlisted into the Kenya Police Service on 4th October, 1992, Police Officer Number 65073 and have now served the Police Service for 19 years during which period he was at all times material a Police Constable attached to Muthangari Police station, within Dagoreti Division, Nairobi Area Command, Nairobi County though he has served in the same capacity at several other Police Stations within the Republic of Kenya.
4. According to the applicant, there has never been any public complaint against him or substantial report to warrant the decision of the 1st Respondent conveyed by the Provincial Police Officer Nairobi on behalf of the 1st Respondent on a letter Ref. B/EST/A/15vol.19(102) dated 15.12.2012 at all. According to him, on the 22nd of November, 2011 at about 0602 hours evening he reported on duty in the company of his colleague Police Constable **Musili Kithome**, and thereafter we proceeded to Kawangware for duty. At around midnight at the Kawangware 46 terminus they were approached by three motorcyclists who informed them that they were confronted by four persons armed with *pangas* and that their client managed to escape into his place of resident. Thereafter, the applicant averred, they intensified the patrols within the areas of Soko Mjinga, Kawangware 46 terminus and its environs.
5. At around 3.00 a.m. while heading to Kawangware 46 terminus from Soko Mjinga the applicant heard somebody crying for help and on approaching the screaming ceased but four men armed with *pangas* immediately emerged who on being challenged to stop one of them aimed a *panga* at his head prompting him to shield using his rifle and in self defence, his colleague came to his rescue by shooting the attacker and in the process enabling him to cork his rifle and shoot, as a result of which two of the men escaped while two succumbed to their injuries and their bodies were taken to the City Mortuary. According to the applicant, they recovered two *pangas* and one browning pistol without a magazine and immediately informed the Officer Commanding Station Muthangari who intervened and later the Scenes of Crime Police arrived at the scene to take evidence.
6. On the 23rd November, 2011 at around 10.00 a.m. both the applicant and his colleague were

arrested at Muthangari Police Station following a shooting incident which took place at around 3.00.am the same day after which he surrendered my rifle for ballistic analysis. He was thereafter escorted to Kilimani Police Station by the Criminal Investigation Department Officer form Nairobi, and was later arraigned in Milimnai High Court at about 1700 hours before Lady **Justice Philomena Mwilu** for the offence of murder and later remanded at Kilimani Police Station for 14 days awaiting completion of investigations. On the 24th November 2011 while in custody OC Crime Kilimani Police Station **Ag. IP Lang'at** called both of them to his office and told the applicant to sign Defaulter Sheet (P6 form) without giving satisfactory reasons or explanations therefor.

7. The applicant deposed that he pleaded not guilty and a bond of 3 million and a similar surety was issued pending the hearing of the case and thereafter co-operated with the investigation team and done all that was required of him as a police officer or an accused person and that at no time did he refuse to attend an inquiry, if any, as per the Force Standing Orders nor did he obstruct the holding of such an inquiry, if any, to warrant the said inquiry to be held in his absence therefore failing the provisions of paragraph 16(iv) Cap 20 Force Standing Orders and Article 50(2) of the Constitution of Kenya hence denial of his constitutional right of defending myself.
8. The applicant averred that he was never notified of any intended orderly room proceedings with, minimum 24 hours or where the notice was waived by a gazetted officer, such waiver communicated in writing, as required by Force Standing Orders Cap 20 paragraph 16(viii). On on 27th December, 2011 at 10.00a.m. while in Nairobi remand, he was served with a letter Ref: B/EST/A/15/Vol 19(102) dated 15th December, 2011 with a signal service with effect from 30th November, 2011 and he lodged an appeal through vide a letter to the 1st Respondent and the 2nd Respondent appealing against disciplinary conviction and the sentence of dismissal from the Kenya Police Service to which no correspondence has been received.
9. According to the applicant, the charge and circumstances of the offence was neither read to him nor was he ever requested to plea thereto. Further, at no time did he appoint a defaulter representative as per the provisions of Police Regulations chapter 20, the Force Standing Orders paragraph 16(iv). To him, at no time prior to the dismissal from the police force was he called upon to show cause as to why he should not be dismissed from the Police Force. Similarly, he was not afforded an opportunity to be herd or to make representation upon the allegations against him.
10. The applicant contended that the Kenya Police chose to prosecute, intimidate and persecute him due to external pressure before even exhausting investigations, in total disregard of the due process and that there was and is no basis in fact for the purported decision to dismiss him which decision by the 1st Respondent is in breach of the Police Regulations Act Chapter 20 Force Standing Orders hence the 1st Respondent should forthwith reinstate him to the Police Force as he has been adversely affected by all the foregoing and by the deprivation thereby of the rights and protections afforded to him by the Constitution of Kenya and other applicable laws.

RESPONDENTS' CASE

11. In opposition to the application the respondents filed the following grounds of opposition:

1. THAT the application is based on contested and unsubstantiated issues of facts which are best dealt with in a civil suit.

2. THAT the order of prohibition cannot issue as the same is already overtaken by events.

3. THAT the legal procedure and the substantive law were complied with in arriving at the decision.

4. THAT the orders sought for are not amenable to Judicial Review application.

APPLICANT'S SUBMISSIONS

12. On behalf of the applicant, it was submitted that under Article 21(1) it is the fundamental duty of the state and every state organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights and that the law applies to the Respondents. It was further submitted that that in dismissing the applicant the Respondents contravened Articles 25(c), 47 and 50 of the Constitution which provide for the right to fair trial.
13. It was submitted that the Respondents failed to comply with the provisions of the Forces Standing Orders made under section 5 of the Police Act by not undertaking any inquiry before arriving at a decision whether or not the applicant should have been prosecuted. It was further submitted that paragraph 12(ii) of the said Orders which provides that it is only after conviction that an authorised officer has the power to dismiss. It was further submitted that under paragraph 16(iv) of the said Orders it is only upon wilful obstruction by the defaulter officer after being properly notified of an inquiry can the inquiry proceed in his absence. In this case neither a notification was given to the applicant nor did he obstruct any such inquiry so as to justify the inquiry proceeding in his absence. It was further submitted that paragraph 16(x)(t) of the said Standing Orders was contravened in that the applicant was not informed of the finding and sentence and of his right to appeal after the alleged Orderly room proceedings against the applicant.
14. It was therefore submitted that the applicant's purported dismissal is defective and invalid. However, despite lodging an appeal against the said decision the applicant has not received any response. In the applicant's view, what is in issue herein is not the merits of the decision but the procedure adopted by the Respondents hence the orders sought ought to be granted.

DETERMINATION

15. I have considered the issues raised herein.
16. The applicant's main contention in these proceedings is that before the impugned decision was taken the applicant was never afforded an opportunity of being heard and that the whole disciplinary proceedings were unfair to him.
17. The Respondents were however content with grounds of opposition which have been set out hereinabove.
18. It is therefore clear that the applicant's factual averments made on oath have not been controverted. That the 1st Respondent was exercising an administrative action in dismissing the applicant cannot be in doubt. Under Article 47 of the Constitution:

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

19. In the Uganda case of **Pastoli vs. Kabale District Local Government Council and Others [2008] 2 EA 300,** it was held:

"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural impropriety ...Illegality is when the decision-making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or *ultra vires*, or contrary to the provisions of a law or its principles are instances of illegality. It is, for example, illegality, where a Chief Administrative Officer of a District interdicts a public servant on the direction of the District Executive Committee, when the powers to do so are vested by law in the District Service Commission... Irrationality is when there is such gross unreasonableness in the decision taken or act done, that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision. Such a decision is usually in defiance of logic and acceptable moral standards...Procedural Impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the Rules of Natural Justice or to act with procedural fairness towards one to

be affected by the decision. It may also involve failure to adhere and observe procedural rules expressly laid down in a statute or legislative Instrument by which such authority exercises jurisdiction to make a decision."

20. In **Esther Kavuka Adagala vs. The Attorney General Nairobi HCCC No. 4086 of 1992** it was held that there needs to be a strict observance of the procedure in any disciplinary proceedings and that leads to

consequential quashing of the disciplinary action on account of non-compliance with the laid down procedure. This position was emphasized in **Joseph Mulobi vs. Attorney General & Another Nairobi HCCC No. 742 of 1985.**

21. In **Republic vs. The Honourable The Chief Justice of Kenya & Others Ex Parte Moijo Mataiya Ole Keiwua Nairobi HCMCA No. 1298 of 2004** the High Court expressed itself as follows:

"Whereas the rules of natural justice are not engraved on tablets of stones, fairness demand that when a body has to make a decision which would affect a right of an individual it has to consider any statutory or other framework in which it operates. In particular it is well established that when a statute has conferred on a body the power to make decision affecting individuals, the courts will only require the procedure prescribed to be introduced and followed by way of additional safeguards as that will ensure the attainment of fairness. In essence natural justice requires that the procedure before any decision making authority which is acting judicially shall be fair in all circumstances. The right to be heard has two facts, intrinsic and instrumental. The intrinsic value of that right consists in the opportunity which it gives to the individuals or groups, against whom decisions taken by public authorities operate, to participate in the proceedings by which those decisions are made, an opportunity to express their dignity as persons. The ordinary rule which regulates all procedures is that persons who are likely to be affected by the proposed/likely action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively. Depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it and such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence…….. Although the courts have for a long time supplemented the procedure that had been laid down in a legislation where they have found that to be necessary for that purpose, before this unusual kind of power is exercised, it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of legislation. Additional procedural safeguards will only ensure the attainment of justice in instances where the statute in question is inadequate or does not provide for the observance of the rules of natural justice. The courts took their stand several centuries ago, on the broad principle that that bodies entrusted with legal powers could not validly exercise them without first hearing the people who were going to suffer as a result of the decision in question. This principle was applied to administrative as well as judicial acts and to the acts of individual ministers and officials as well as top the acts of collective bodies such as justices and committees. The hypothesis on which the courts built up their jurisdiction was that the duty to give every victim a fair hearing just as much a cannon of good administration is unchallengeable as regard its substance. The courts can at least control the primary procedure so as to require fair consideration of both sides of the case. Nothing is more likely to conduce to good administration. Natural justice is concerned with the exercise of power that is to say with acts or orders which produce legal results and in some way alter someone's legal position to his advantage. As part of a reasonable, fair and just procedure the court has a cardinal duty to uphold the constitutional guarantees, the right to fair hearing which entails a liberal and dynamic approach in order to ensure the rights enjoyed by an individual is not violated because there is no particular safeguards provided under section 62 that deals with the

removal of a Judge in instances where there is a complaint against him."

22. Similarly in **Msagha vs. Chief Justice & 7 Others Nairobi HCMCA No. 1062 of 2004 [2006] 2 KLR 553** the High Court expressed itself as follows:

"The Court observes firstly that the rules of natural justice "*audi alteram partem*" hear the other party, and no man/woman may be condemned unheard are deeply rooted in the English common law and have been transplanted by reason of colonialisation of the globe during the hey-days we of the British Empire. An essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers observe the principles of natural justice. A decision is unfair if the decision-maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision. Where suspension was made as a holding operation pending enquiries the rules of natural justice did not apply because the suspension was a matter of good administration. Suspension is merely expulsion *protanto*. Each is penal and each deprives the member concerned of the enjoyment of the rights of membership of offices. Accordingly in my judgement the rules of natural justice *prima facie* apply to any such process of suspension in the same way that they apply to expulsion. Those words apply no doubt to suspensions which are inflicted by way of punishment as for instance a member of the Bar is suspended from practice for six months or when a solicitor is suspended from practice. But they did not apply to suspensions which are made as a holding operation pending inquiries….Very often irregularities are disclosed in a government department or in a business house and a man may be suspended on full pay pending inquiries. Suspicion may rest on him and he is, suspended until he is cleared of it. No one so far as I know, has ever questioned such a suspension on the ground that it would not be done unless he is given notice of the charge and opportunity of defending himself and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicion, the others will not trust the man. In order to get back the proper work he be suspended. At that stage the rules of natural justice do not apply……. The principle of legitimate expectation lies in the proposition that where a person or a class of persons has previously enjoyed a benefit or advantage of procedure which, on reasonable grounds, seemed likely to be continued as a standard way or guide, with respect to the resolution or disposal or certain questions a claim of legitimate expectation may arise. Put differently, legitimate expectation is but one variant aspect of the duty to act fairly and natural justice is but a manifestation of a broader concept of fairness. The rules of natural justice are minimum standards of fair decision-making imposed by the common law on persons or bodies who are under a duty to "act judicially". They were applied originally to courts of justice and now extend to any person or body deciding issues affecting the right or interests of individuals where a reasonable citizen would have a legitimate expectation that the decision-making process would be subject to some rules of fair procedure. The content of natural justice is therefore flexible and variable. All that is fundamentally demanded of the decision maker is that his decision in its own context be made with due regard for the affected parties' interests and accordingly be reached without bias and after giving the party or parties a chance to put his or their case. Nevertheless some judges prefer to speak of a duty to act fairly rather than a duty to observe the rules of natural justice, often the terms are interchangeable. But it is perhaps now the case while a duty to act fairly is incumbent on every decision-maker within the administrative process whose decision will affect individual interests, the rules of natural justice apply only when some sort of definite code of procedure must be adopted, however flexible that code may be and however much the decision-maker is said to be master of his own procedure. The rules of natural justice are generally formulated as the rule against bias (*nemojudex in sua causa*) and in respect of] the right to a fair hearing [*audi alteram partem*]."

23. Therefore in the absence of any affidavit sworn by the Respondents to controvert the allegations made by the applicant based on the only evidence on record, this Court finds that the applicant was never afforded an opportunity of being heard. Although it is contended that the application is based on contested and unsubstantiated issues of facts which are best dealt with in a civil suit and that the legal procedure and the substantive law were complied with in arriving at the decision, there is no material before me on the basis of which I can either find that there are contested facts or that the procedure was substantially complied with or at all. Accordingly the Respondents' decision was tainted with irrationality and was further tainted with procedural illegality.
24. A case with striking similarities was determined by **Wendoh, J** in **Christopher Gatuiri vs. Commissioner of Police [2007] eKLR** in which the learned Judge expressed herself as follows:

"Before an enquiry into an allegation is commenced the accused person has to be notified of the offence in writing. The notice has to be in accordance with Appendix 2 c but the notice may be disposed with where it is in the public interest that the inquiry should proceed forth with. In the instant case, the Applicant contends that the Respondent breached this Regulation as he was never notified of the offence he was going to face. The offence against the Applicant was allegedly committed on 26th October 2005. The orderly proceedings were conducted against the Applicant on 31st October 2005 which was over 4 days since the alleged offence was committed. There is no evidence that before 31st October 2007, the Applicant had been notified of the offence that he would be facing. The enquiry did not commence soon after26th October 2005 to allow for an exemption to the notice. The Respondent was in breach of para 16 of the Forces Orders.....Para 16(x) then sets out how all proceedings in inquiries will be conducted. The first step is for the presiding officer to ascertain whether the Applicant was notified of the offence in writing. The record of the proceedings CG 3 do not disclose that the presiding officer ever inquired into whether the notice was issued. The charge was supposed to be read to the accused in a language he understood. The proceedings do not disclose in what language the charge was read. The presiding officer compelled and recorded evidence of witnesses but failed to inform the Applicant that if he testified in his defence he would be cross examined as provided by the Force Orders in accordance with paragraph 16 (x)(r). The presiding officer evaluated the evidence and gave his verdict and referred the matter to the Police Commissioner for sentencing for reasons that the offence was very serious. The Applicant objects to the punishment being awarded by the Police Commissioner because the Applicant had a right of appeal to the same Police Commissioner and the fact that the matter was referred to the Police Commissioner for sentence denied him the right of appeal. Para 16(v)(r) allows the presiding officer to refer the proceedings to an officer of a more senior rank who may proceed to award punishment depending on the gravity of the offence. Para 24 provides that an appeal against discipline lies to the persons specified in the fourth column of Appendix 20 A. If the appeal lay to the Commissioner of Police then the sentencing should have been done by an officer of a lower rank than the Police Commissioner. By the presiding officer sending the matter to the commissioner for sentence, the Applicant's right of appeal was taken away, which is gross procedural lapse. Infact in the letter of dismissal it is so stated, that the Applicant had no right of appeal which is a breach of paragraph 24 of the orders. From a consideration of all the above provisions, the Police Act has specifically set out procedure to be adopted in discipline matters of its officers and the same has to be followed I find the Respondent to be guilty of gross procedural impropriety.....The Applicant also contends that the Respondent did not give reasons for his decision. Even where it is not expressly provided it is expected that a body exercising quasi judicial functions will give reasons for its decision as evidence of fairness of the decision. In R V SECRETARY EX PA DOODY (H L) (1994) IAC 531 the House of Lords underscored the importance of giving reasons. It said at page 563 "My Lords, I consider that the 2nd and 3rd issues are both as part of the same question, and that the focus of both is too narrow. The central question is whether the prisoner is entitled to know what materials the Secretary of State will find upon when making his decision and (after the event) how their decision was arrived at. The opinion of the Judges and the reasons for the opinion are important, not because they have any direct effect but because they form part of the corpus of material on

which the Home Secretary bases his decision…." In the instant case the presiding officer summarized the evidence of the witness and that of the Applicant and made his findings. He did not give reasons for the said decision and in my view I would find the same to be irrational and unreasonable since there is no basis for it. Such a decision would be amenable to Judicial Review."

25. As to whether judicial review orders could be granted in such cases, the learned Judge held:

"Can the orders of Judicial Review issue. This court is aware that the Respondent terminated the Applicant's employment with Police. The courts will normally not interfere with Master and Servant relationship by way of Judicial Review, Judicial Review being public law remedy. In Republic Vs. EAST BERKSHIRE ex parte Walson (1985) QB 152, a nurse who was dismissed for misconduct moved the court for Judicial Review orders and the court declined to grant them holding that the applicant was not seeking to enforce a public law right but a private contractual right under the contract of employment and that the application was therefore an abuse of the court process. The court said "an applicant for Judicial Review had to show that a public law right which he enjoyed had been infringed but a distinction had to be made between infringement of statutory provisions giving rise to public law rights and those that arose solely from breach of contracts of employment." In Republic V. RRC ex parte Lavelle (1983) 1 NLR 23 and CONSOLATA KIHARA & 241 OTHERS VS. DIRECTOR OF KENYA TRYPANOSOMIASIS RESEARCH INSTITUTE (2003) KLR, 233. The courts have held that Judicial Review orders could not apply the contracts of employment. However, in the case of ERIC MAKOKHA V. LAWRENCE SAGINI & others CA 20/1994, the Court of Appeal observed that where one's employment is statutorily underpinned meaning that a special procedure is provided by statute for the removal of an officer from employment, the same should be adopted. The Court of Appeal said "The word statutory underpinning is not a term of art. It has no recognized legal meaning… we should give it its primary meaning. To underpin, is to strengthen. As a concept, it may also mean that employee's removal was forbidden by statute unless the removal met certain formal laid down requirements. It means some employees in public positions may have their employment guaranteed by statute and could not be lawfully removed unless the formal requirements laid down by statute were observed. It is possible this is the meaning of what has become the charmed words "statutory underpinning". In this case there is a specific procedure provided for in the Police Act and Regulations (Standing Orders). This court is aware that it can not force a marriage between the Applicant and the employer but, in such a case where procedure is set out in a statute and it is flagrantly ignored or neglected by the authority, or Public Officer this court would not hesitate to interfere so that the matter can be looked at again and a proper decision be made if possible. It matters not whether the same decision will be arrived at. This court is concerned with not the merit of the decision of the authority or Public Officer but the decision making process itself, to ensure that the 13 subject is treated fairly. In this case for example the Respondent would have to consider the evidence, evaluate it and give reasons. Even if the same decision were arrived at, the Applicant should not be denied due process and his right of appeal as provided under the Force Orders."

26. In this case whereas I am not prepared to hold that the applicant's employment was statutorily underpinned, I agree with the learned Judge that where procedure is set out in a statute and it is flagrantly ignored or neglected by the authority, or Public Officer this court would not hesitate to interfere so that the matter can be looked at again and a proper decision be made if possible and it matters not whether the same decision will be arrived at. This court is satisfied that the Respondent did not comply with the procedure provided under the Forces Orders in terminating the Applicant's employment with the police. Further the Respondents contravened the rules of natural justice in arriving at the impugned decision as provided under Article 47 of the Constitution. An order of certiorari lies where the decision has been made in excess or without jurisdiction or where rules of natural justice have been flouted or where there is an error on the face of the Record. See **Kenya National Examinations Council vs. Republic Civil Appeal No.**

266 of 1996.

27. In this case the Respondent acted in excess of his jurisdiction and breached rules of natural justice and an order of certiorari is hereby issued to call for and quash the decision contained in the letter dated 15th December, 2011 which decision is hereby quashed. It follows that the relationship between the parties herein reverts to the position that prevailed before the said letter. With respect to the order of prohibition sought, the Court cannot grant the same in the terms sought. It is not for the Court to direct the Respondent on the manner of proceeding. It is upon the Respondents to decide on the next course as long as the same is legal.
28. The applicant will have the costs of these proceedings.

Dated at Nairobi this day 28th of March 2014

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Mahinda for the applicant

Miss Maina for Ms Sirai for the Respondents